

executor

/ɪg'zɛkjʊtə, eg'zɛkjʊtə/
noun

LAW

a person or institution appointed by a testator to carry out the terms of their will.



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Probate Administration

Potential Pitfalls for Executors

(and how to manage them)



Probate Claims

Any potential challenges/claims against the estate must be made by the claimant within 6 months from the date of the Grant of Probate. If there is a potential claimant or dispute it is unwise to distribute the estate until after the deadline date has passed.

Useful website:

www.lawsociety.org.uk/public/for-public-visitors/common-legal-issues/dealing-with-someones-affairs-when-they-die



Bankruptcy Checks

If any beneficiary is bankrupt, has an IVA or CCJ you must not pay their inheritance to them directly. Instead, you must alert their trustee in bankruptcy or the creditor managing their debt and pay any outstanding balance to them first or suffer the consequences!

Useful website:

www.insolvencydirect.bis.gov.uk



Capital Gains Tax

If the estate makes more than £3,000 in profit during the estate administration process, you have to register for an estate tax return. Typically gains will arise from the sale of shares or properties. The probate value is compared to the sale value when working out the profit margin.

Useful website:

www.gov.uk/probate-estate/reporting-the-estate



Statutory Interest

These days obtaining probate and or selling assets in the estate take time. If there are pecuniary legacies in the Will i.e. specific gifts of money to a specific person or group of persons e.g. £5,000 to my grandchildren, this must be paid within 12 months from the date of death. Failing that the executors must add Statutory Interest to that legacy amount before making payment (5% per annum).

Useful website:

www.lawskills.co.uk/articles/2021/09/interest-on-legacies



DWP Claims

Executors need to be aware that it is very common for the DWP to investigate the assets in the estate after someone has died. Expect a request for asset information from the DWP around 4-6 weeks after probate has been issued and if the figures do not match their records, expect them to make a potential claim against the estate. Typically if the deceased was in receipt on pension credit, DWP will almost certainly investigate if the estate has large numbers involved. Claims can be backdated and it would be unwise to distribute the estate until the DWP have completed their investigation.

Useful website:

www.gov.uk/benefit-overpayments



Trustee Newspaper Ad

Claims may also be made by “unknown” creditors e.g. loans between family and friends, storecards, creditcards or online gambling. The Executors can place advertisements for creditors which are placed in the London Gazette and a newspaper local to the deceased. These notices advertise for creditors to come forward within 2 months. If you place the advert you are forever protected against validated claims after 2 months. If you do not place the advert, a validated claim would have to be paid by the Executors, not the beneficiaries and there is no time limit. Please note this advert only protected against unknown creditors e.g. secret squirrel debts that the deceased told no one about.

Useful website

www.legalads.co.uk



Means Tested Benefits

If you have a beneficiary on means tested benefits, you may feel pressured to pay their inheritance to someone else as often the inheritance will result in a loss of benefits for that person and in the long run, they would prefer to stay on benefits. Under the Deliberate Deprivation of Asset rules introduced in 2015, if you deliberately re-direct wealth or decline inheritance you will likely be treated as receiving the money anyway. Recent case law suggests these rules are strictly applied and even a Deed of Variation is no longer an effective tool to re-direct your inheritance to avoid means tested benefits as it has been in the past.

Useful website:

www.moneyhelper.org.uk

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